



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

**REQUEST FOR OPINION No.  
07-43C**

**SUBJECT: PAMELA SMITH, PRESIDENT  
STOREY COUNTY SCHOOL DISTRICT  
BOARD OF TRUSTEES**

Ms. Smith is alleged to have violated the provisions of NRS 281A.400.2 by using her position as president of the school district board of trustees in an attempt to obtain free bottled water from the district's Virginia City High School food and beverage concession stand.

**A. JURISDICTION:**

In her capacity as a member and president of the Storey County School District Board of Trustees, Pamela Smith is a public officer as defined by NRS 281A.160. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

**B. RELEVANT STATUTES:**

**NRS 281A.160 "Public officer" defined.**

1. "Public officer" means a person elected . . . to a position which is established by . . . a statute of this State . . . which involves the exercise of a public power, trust or duty.

**NRS 281A.400 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

2. A public officer . . . shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself . . . or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in NRS 281A.420.8<sup>1</sup>.

(b) "Unwarranted" means without justification or adequate reason.

---

<sup>1</sup> **NRS 281A.420.8:** As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

**C. RECOMMENDATION:**

Sufficient credible evidence does not exist to support a finding that Ms. Smith violated the provisions of NRS 281A.400.2. It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.400.2.

**D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):**

On October 4, 2007, a Request for Opinion (complaint) was received from Cathylee James. The following is the substance of the allegations:

Ms. Smith requested four free bottled waters from the school district's concession stand during the football game on August 18, 2007. When told that she must pay for the waters, Ms. Smith stated that she was the president of the school board and wanted the waters for some VIPs. The concession stand worker, Lori Barrington, continued to refuse to give free waters to Ms. Smith. Ms. Smith stated that she would get the waters herself, but Ms. Barrington refused to allow Ms. Smith to enter the concession stand. Ms. Barrington gave Ms. Smith the waters when Ms. Smith signed a paper acknowledging that she owed four-dollars to the concession stand. Later while Ms. James was working the concession stand, Ms. Smith returned and paid five-dollars for the waters.

**E. SUMMARY OF SUBJECT'S RESPONSE:**

On October 19, 2007, Ms. Smith submitted the Subject's Response to the complaint. The following is a summary of her response submitted by her attorneys:

The high school boosters organized the concession stand and invited certain VIPs to attend the game. Two particular gentlemen recognized as VIPs by the boosters had played football for Virginia City High School in the early 1940s. Ms. Smith asked these two gentlemen if there was anything they needed, and they responded that they would like some water. Ms. Smith went to the concession stand and asked for two free bottled waters for the two gentlemen. When Ms. Smith attempted to explain that the VIPs recognized by the boosters were requesting the waters, Ms. Barrington became agitated.

Rather than pursue her request further, Ms. Smith decided she would pay for the waters for the VIPs and purchase two additional bottled waters for her husband and herself. She changed her request to four waters and signed an IOU to come back and pay for the waters before the end of the game. At no time did Ms. Smith ever make any move to go into the concession stand to get the waters for herself. Ms. Smith delivered two waters to the two VIPs and returned to her seat with the other two waters.

Later, Ms. Smith returned to the concession stand to pay for the four bottled waters. Ms. Smith paid five-dollars for the waters to Michele Van Voorst, who made a written record of the payment. Ms. Smith never used her position on the school board to obtain free items from the boosters. In this instance, Ms. Smith paid for the waters.

## **SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)**

Even if a privilege was secured, Ms. Smith's original request for free waters for the VIPs was clearly warranted. Ms. Smith was directed by the president of the boosters to take care of the VIPs and get them what they needed. Therefore, Ms. Smith's request that the concession stand provide free waters for the VIPs was warranted.

There is no evidence to suggest that Ms. Smith asked for free waters for herself or her husband. Only after Ms. Smith avoided the confrontation by deciding to pay for the two waters for the VIPs did she decide to purchase two more waters for herself and her husband. She paid for all the waters, including an additional dollar to benefit the boosters.

There is no basis either in the law, or in the facts as they occurred, to substantiate an allegation that Ms. Smith violated NRS 281A.400.2. Therefore, there is no just and sufficient cause for the Commission on Ethics to render an opinion on this matter. Ms. Smith respectfully requested that the complaint be dismissed.

### **F. INVESTIGATIVE ACTIVITIES:**

The investigator:

- Reviewed Request for Opinion (complaint), including the following documents (**TAB B**):
  - Written statements of Cathylee James and Lori Barrington made during public comment at the Storey County School District Board meeting of September 6, 2007.
  - A newspaper article from the *Virginia City News* regarding the statements made by Ms. James and Ms. Barrington at the Storey County School District Board meeting of September 6, 2007.
- Reviewed Subject's Response received from Ms. Smith's attorneys, the law firm of Maupin, Cox & LeGoy, including the following items (**TAB C**):
  - Affidavits of Ms. Smith and Toni Givant.
  - Statements from Michele Van Voorst, Kathy Dotson and Dr. Robert Slaby.
  - Portions of the audio recordings of the Storey County School Board meetings of September 6 and October 4, 2007 regarding this matter.

The investigator independently researched the following:

- News articles posted on the website of the *Virginia City News*, including the following items (**TAB D**):
  - September 14, 2007 news article regarding public comments made by Ms. James and Ms. Barrington at the Storey County School Board meeting of September 6, 2007.
  - August 20, 2007 news article regarding the Virginia City High School football game on August 18, 2007.

**G. CONCLUSION AND RECOMMENDATION:**

Ms. Smith is alleged to have violated NRS 281A.400.2 when she used her position as president of the school district board of trustees in an attempt to obtain free bottled waters from the school district's concession stand.

NRS 281A.400.2 states that a public officer shall not use her position to secure or grant unwarranted privileges for herself, any business entity in which she has a significant pecuniary interest, or any person to whom she has a commitment in a private capacity to the interests of others as defined in NRS 281A.420.8.

An analysis of the complaint, response, affidavits, statements, and other evidence indicates that Ms. Smith requested free waters for the VIPs. In her statement, Kathleen Dotson, secretary of the Virginia City High School Boosters Club, verified that the bottled waters were intended for VIPs John Bryns and Phil Nagel. Ms. Dotson stated that Ms. Smith may have assumed "that the Booster Club would be helping to play host to the many honorary guests invited to the day of festivities." Ms. Dotson further stated that Ms. Smith's "attempt to acquire the water was because [Ms. Smith] noticed that [Ms. Dotson] was unable to follow through with the task and was trying to help out in any way that she could."

After the confrontation with Ms. Barrington, Ms. Smith was given four waters, signed an IOU, came back to the concession stand before the end of the game, and paid five dollars for the waters.

Ms. Smith admits that she requested two free waters for the VIPs, but denies requesting free water for herself. Her request of free waters for the VIPs was warranted, in that she may have reasonably assumed that the concession stand would furnish free waters to the VIPs. Ultimately, she paid for all of the waters.

No credible evidence exists to suggest that Ms. Smith received any privilege for herself, any business entity in which she has a significant pecuniary interest, or any person to whom she has a commitment in a private capacity to the interests of that person.

It is recommended that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Ms. Smith violated the provisions of NRS 281A.400.2 regarding the alleged use of her position to secure or grant unwarranted privileges, preferences, exemptions or advantages for herself or anyone else.

**REPORT PREPARED BY:**

Matt C. DiOrio

DATED: 11/13/07

MATT C. DI ORIO

SENIOR INVESTIGATOR

**APPROVAL AND RECOMMENDATION BY:**

Patricia D. Cafferata

DATED: 11/13/07

PATRICIA D. CAFFERATA, ESQ.  
EXECUTIVE DIRECTOR